

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**UNITED STATES OF AMERICA**

**vs.**

**JESUS CENTENO**

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**Case No. 12 C 7687**

**MEMORANDUM OPINION AND ORDER**

MATTHEW F. KENNELLY, District Judge:

Jesus Centeno pled guilty to two firearms offenses, and the Court sentenced him to a prison term totaling 108 months (nine years). Mr. Centeno filed a notice of appeal, but his appointed attorney later dismissed the appeal with the permission of the Court of Appeals. Counsel's motion to dismiss the appeal included a signed statement from Mr. Centeno in which he stated that "I have been informed of my attorney's intention to move to dismiss my appeal. I concur in my attorney's decision and hereby waive all rights to object or raise any points on appeal." Mot. to Dismiss Appeal, Case No. 11-1902 (7th Cir.), filed Sept. 16, 2011.

Mr. Centeno has now filed a motion under 28 U.S.C. § 2255 seeking to vacate his sentence. As provided in Rule 4(b) of the Rules Governing Section 2255 Proceedings, the Court has reviewed the motion in order to determine whether to require the government to respond.

Mr. Centeno makes two claims in his section 2255 motion. First, he contends that the Court did not make the findings needed to support certain Sentencing Guidelines enhancements (he does not specify what these enhancements were).

Second, he contends that the facts to which he admitted in pleading guilty did not support certain Guidelines enhancements (again, he does not specify what enhancements). With regard to both claims, Mr. Centeno acknowledges that he did not assert the claims on appeal, saying that “appointed counsel did not raise the issue[s] on appeal.”

Mr. Centeno could have raised both of these arguments on appeal, but he did not do so. For this reason, the claims are procedurally barred in a section 2255 motion. “[C]laims cannot be raised for the first time in a § 2255 motion if they could have been raised at trial or on direct appeal . . . .” *Sandoval v. United States*, 574 F.3d 847, 850 (7th Cir. 2009). This sort of procedural default may be excused if the defendant shows cause for the default and prejudice resulting from it. See *id.* at 851 n.1. The only potential “cause” that Mr. Centeno has identified is his appellate counsel’s failure to raise the point. This, however, does not help Mr. Centeno. As the Court has noted, Mr. Centeno signed a document in which he voluntarily agreed to give up his right to raise any points on appeal. Thus he has no viable argument that there is “cause” that might excuse his procedural default of the claims he now seeks to assert in his section 2255 motion.

That default aside, there are other reasons why Mr. Centeno’s section 2255 motion lacks merit. The Court has reviewed the transcript of the sentencing hearing, which is part of the record of the criminal case. Mr. Centeno affirmed at the outset of the hearing that he had read the presentence report and had discussed it with his attorney. Defense counsel raised only one issue with regard to the Sentencing Guideline calculation, specifically, an issue concerning the criminal history calculation.

See Mar. 30, 2011 Tr. at 3-4. Counsel specifically acknowledged, however, that the calculation proposed in the presentence report was correct. *Id.* at 4. Thus at sentencing, there were no actual disputes raised regarding enhancements under the Sentencing Guidelines. So even without consideration of Mr. Centeno's withdrawal of his appeal, the claims he now makes were procedurally defaulted because he never made them before this Court in the first place. And Mr. Centeno nowhere alleges that his trial counsel rendered constitutionally ineffective assistance in this regard.

For these reasons, the Court concludes that it "plainly appears" from the record that Mr. Centeno is not entitled to relief. See Rule 4(b), Rules Governing Section 2255 Cases. The Court therefore directs the Clerk to enter judgment dismissing defendant's motion.



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MATTHEW F. KENNELLY  
United States District Judge

Date: November 15, 2012